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VVP ADVISORS, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VVP Advisors, Inc.

) Case No.: 8:19-cv-919

Plaintiff,

)
COMPLAINT FOR DECLARATORY
RELIEF AND REVIEW OF AGENCY
ACTION UNDER THE
ADMINISTRATIVE PROCEDURE
ACT

vs.
Kathy Baran, in her capacity as Director
of California Service Center of
U.S.C.I.S., and L. Francis Cissna, in his
capacity as Director of U.S.C.I.S., and
U.S.C.I.S.

Defendants.

INTRODUCTION

1. PLAINTIFF VVP Advisors Inc. (VVP Advisors) challenges the Defendants' arbitrary and unlawful decision to deny an "H-1B" nonimmigrant petition (hereafter "H-1B petition"), that it filed on behalf of Dr. Xinhong Lim so that it could employ him as a biotechnical investment analyst. VVP Advisors is a Delaware Corporation, and the U.S. subsidiary of Vickers Venture Partners – a venture capital firm based in Singapore. Vickers Venture Partners was founded in 2005 and currently manages \$2.5 billion. VVP Advisors was incorporated in 2016.

1 2. The H-1B visa classification allows highly skilled and educated foreign
2 workers to work for U.S. employers in “specialty occupations”—that is, positions
3 requiring the theoretical and practical application of a body of highly specialized
4 knowledge, for which a bachelor’s or higher degree in a specific specialty is
5 required.

6 3. The position for which VVP Advisors filed the H-1B petition, Biotechnical
7 Investment Analyst, is a Level IV position (the highest classification given by
8 Department of Labor), which, by definition, requires full competency, judgment
9 and independent evaluation, and the use of advanced skills and diversified
10 knowledge to solve unusual and complex problems. The prevailing wage for the
11 position is \$111,093/year; however, VVP Advisors’ offered salary was
12 \$250,000/year. The biotechnical investment analyst’s job duties include:

- 13 • Identification and detailed scientific evaluation of investment opportunities
14 in biotech, pharmaceutical and healthcare. 30% of time.
- 15 • Ongoing support of biotech portfolio companies. 30% of time.
- 16 • Negotiation of terms for new investments and exits from current portfolio
17 companies. 15% of time.
- 18 • Raising money for VVP Advisors and portfolio companies by meeting with
19 potential investors. 10% of time.
- 20 • Managing projects and teams. 10% of time.
- 21 • Formulation of investment strategy in biotech, pharmaceutical and
22 healthcare companies. 5% of time.

23 4. In support of its petition, VVP Advisors submitted a detailed job description
24 of the biotechnical investment analyst position including the specific job duties and
25 percentage of time to be spent on each. VVP Advisors provided evidence that Dr.
26 Lim attained the requisite education to perform the job duties as a biotechnical
27 investment analyst.

28 5. In denying Plaintiff’s H-1B petition, Defendants mischaracterized VVP

1 Advisors' detailed job description and the in depth explanation on why this
 2 position requires a strong scientific education to perform the job duties. Defendants
 3 disregarded the evidence when they concluded that the biotechnical investment
 4 analyst position was more properly categorized as a computer systems analyst or
 5 financial analyst, and that Dr. Lim did not have the educational background
 6 required to be classified as either of these job titles.

7 6. Defendants acted in an arbitrary and capricious manner and contrary to law
 8 in denying VVP Advisors' H-1B petition. As such, the Court should vacate the
 9 denial and approve the H-1B petition.

JURISDICTION

11 7. This case arises under the INA, 8 U.S.C. §1101 *et seq.* and the
 12 Administrative Procedure Act (APA), 5 U.S.C. §701 *et seq.* This Court has
 13 jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331
 14 (federal question jurisdiction). This Court also has authority to grant declaratory
 15 relief under 28 U.S.C. §§2201-02, and relief under the APA. There exists between
 16 the parties an actual and justiciable controversy over which Plaintiff seeks
 17 declaratory relief to protect its legal rights. The United States has waived its
 18 sovereign immunity under 5 U.S.C §702.

VENUE

19 8. Venue in this judicial district is proper under 28 U.S.C. §1391(e)(1)(A),
 20 because this is a civil action in which the Defendants, respectively, are an agency
 21 of the United States and officers of the United States acting in their official
 22 capacity, and the office (California Service Center) that issued the decision on the
 23 H-1B petition is located in this District.

EXHAUSTION OF REMEDIES

25 9. Defendant U.S. Citizenship and Immigration Services' (USCIS) March 12,
 26 2019 denial of Plaintiff VVP Advisors' H-1B petition constitutes final agency
 27 action under the APA. See 5 U.S.C. §§551(13); 701(b)(2); 704. Neither the INA
 28

1 nor implementing regulations at 8 C.F.R. § 103.3(a) require an administrative
 2 appeal of the denial. Accordingly, Plaintiff has no administrative remedies to
 3 exhaust.

4 **PARTIES**

5 10. Plaintiff VVP Advisors is the U.S. subsidiary of Vickers Venture Partners.
 6 VVP Advisors was incorporated in 2016 in Delaware. Founded in 2005, Vickers
 7 Venture Partners is based in Singapore. Vickers Venture Partners' portfolio
 8 focuses on life sciences, biotechnology, nanotechnology, and artificial intelligence
 9 among other areas.

10 11. Defendant USCIS is a component of the Department of Homeland Security,
 11 6 U.S.C. §271, and an “agency” within the meaning of the APA, 5 U.S.C. §551(1).
 12 USCIS is responsible for the adjudication of immigration benefits, including
 13 nonimmigrant petitions. USCIS denied the H-1B petition at issue here.

14 12. Defendant Kathy Baran is the Director of California Service Center of
 15 USCIS. In this role, she oversees and manages the adjudication and processing of
 16 petitions and applications. California Service Center issued the decision on
 17 Plaintiff VVP Advisors’ H-1B petition and she is sued in her official capacity.

18 13. Defendant L. Francis Cissna is the Director of USCIS. In this role, he
 19 oversees the adjudication of immigration benefits, and establishes and implements
 20 governing policies. He has ultimate responsibility for the adjudication of Plaintiff
 21 VVP Advisors’ H-1B petition and is sued in his official capacity.

22 **LEGAL BACKGROUND**

23 ***H-1B Petition Process***

24 14. Section 101(a)(15)(H)(i)(b) of the INA provides for the admission into the
 25 United States of temporary workers sought by petitioning U.S. employers to
 26 perform services in a specialty occupation. 8 U.S.C. §1101(a)(15)(H)(i)(b). This
 27 nonimmigrant classification is commonly referred to as “H-1B.”

28 15. A “specialty occupation” is one that requires the “(A) theoretical and

1 practical application of a body of highly specialized knowledge, and (B) attainment
2 of a bachelor's or higher degree in the specific specialty (or its equivalent) as a
3 minimum for entry into the occupation in the United States." 8 U.S.C. §1184(i).

4 16. The H-1B classification has several prerequisites a U.S. employer must meet
5 before filing a nonimmigrant visa petition with USCIS. One of relevance is the
6 statutory requirement that the employer file a Labor Condition Application (LCA)
7 for certification by the U.S. Department of Labor (DOL). 8 U.S.C. §1182(n)(1).
8 The employer makes certain attestations in the LCA which are intended to ensure
9 that the employment of an H-1B worker will not have an adverse effect on the
10 wages and working conditions of similarly-situated U.S. workers. See 8 U.S.C.
11 §§1182(n)(1)(A)-(D).

12 17. To demonstrate to DOL that it will pay the higher of the prevailing wage or
13 actual wage (the required wage) for its job, the employer may obtain a prevailing
14 wage from a DOL online wage library, using a Standard Occupational
15 Classification (SOC) for the job, the job location and one of four wage levels
16 (Level I being entry level and Level IV being fully competent) depending on the
17 employer's education and experience requirements. At the time VVP Advisors
18 filed the LCA, the instructions directed it to enter the six or eight-digit SOC code
19 for the occupation which most clearly describes the work to be performed. The
20 Department of Labor SOC categories are an incomplete list of actual jobs in the
21 American economy, and, because it takes the federal government several years to
22 issue updates, many newer job titles are not represented.¹ For this reason, there are
23 many catch-all categories. The "All Other" classifications under the SOC have
24 traditionally been reserved for emerging occupations where Bureau of Labor

25
26 ¹ For example, the SOC update for 2018 was recently published, a process that
27 took over four years to complete and relied upon proposals made in 2014. See 82
28 Fed. Reg. 56271 (Nov. 28, 2017).

1 Statistics and the Census Bureau have difficulty obtaining sufficient data to treat
2 the particular occupation as its own SOC category. For VVP Advisors, the closest
3 SOC to its Biotechnical Investment Analyst job is 19-1029, Biological Scientists,
4 All Other. Dr. Lim's job duties were primarily science-based; however, none of the
5 specific scientist positions accurately described the biotechnical investment
6 analyst. For this reason, VVP Advisors classified the position under the SOC for
7 Biological Scientists, All Other.

8 18. When the U.S. employer files the H-1B nonimmigrant petition on the
9 foreign national's behalf with USCIS, the employer must include the DOL-
10 certified LCA.

11 ***H-1B Lottery***

12 19. Congress established a "cap" of 65,000 regular H-1B visa numbers per fiscal
13 year. *See* 8 U.S.C. §1184(g)(1). An additional 20,000 H-1B visa numbers are
14 available each fiscal year without regard to the regular 65,000 "cap" if the
15 beneficiary has a master's or higher degree from a U.S. university. *See* 8 U.S.C.
16 §1184(g)(5)(C). USCIS has characterized the 20,000 additional visa numbers as
17 the H-1B "master's exemption."

18 20. A U.S. employer whose petition is subject to the annual "cap" may file on
19 the first business day of April for employment that begins on October 1st of that
20 year (the first day of the next fiscal year). If USCIS determines that it has received
21 more than enough petitions to meet the H-1B numerical limits at any time within
22 the first five business days of the filing period, it uses a computer-generated
23 random selection process (lottery) to select H-1B petitions for adjudication from
24 the petitions received during that time period.

25 ***H-1B Requirements***

26 21. For an H-1B classification, USCIS determines whether the petitioning
27 employer's job qualifies as a specialty occupation and whether the beneficiary is
28 qualified to perform the job duties required by the specialty occupation. *See* 8

1 C.F.R. §§214.2(h)(4)(i)(A)(1), (h)(4)(iii)(B)(3).

2 22. The agency regulation provides:

- 3 (A) Standards for specialty occupation position. To qualify as a specialty
4 occupation, the position must meet one of the following criteria:
- 5 (1) A baccalaureate or higher degree or its equivalent is normally
6 the minimum requirement for entry into the particular position;
- 7 (2) The degree requirement is common to the industry in parallel
8 positions among similar organization, or, in the alternative, an
9 employer may show that its particular position is so complex or
10 unique that it can be performed only by an individual with a
11 degree;
- 12 (3) The employer normally requires a degree or its equivalent for
13 the position; or
- 14 (4) The nature of the specific duties are [sic] so specialized and
15 complex that knowledge required to perform the duties is
16 usually associated with the attainment of a baccalaureate or
17 higher degree.

18 8 C.F.R. §214.2(h)(4)(iii)(A)(1)-(4).

19 **FACTUAL ALLEGATIONS**

20 23. Vickers Venture Partners is a multi-billion dollar venture capital firm
21 founded in 2005 in Singapore. Plaintiff VVP Advisors, Inc. is the US subsidiary
22 created in order to abide by U.S. employment and tax laws and to enhance the
23 organization's ability to invest in U.S.-based companies. In order to invest in U.S.
24 companies, Vickers Venture Partners needed analysts in the United States who
25 could locate potential investment targets, assess the targets' potential success and,
26 after investing, work closely with the target to help make the company profitable.
27 Vickers Venture Partners manages \$2.5 billion and focuses on artificial
28 intelligence and big data, life sciences and biotech, pharmaceuticals, and clean

1 technology among other industries. As a general rule when Vickers Venture
2 Partners decides to invest in a start-up company, the fund will invest between \$1
3 million and \$12 million. When assessing which potential start-ups are the most
4 promising, Vickers Venture Partners relies on its analysts who have extremely
5 specialized knowledge in their given fields and thoroughly understand their given
6 industry. This is common in the venture capital industry. To expect an investment
7 fund to risk millions of dollars on the opinion of an analyst with less than a
8 bachelor's degree and who does not have specialized knowledge of the subject
9 matter makes little sense.

10 ***Dr. Lim's Employment with Vickers Venture Partners and VVP Advisors***

11 24. Dr. Xinhong Lim obtained his Bachelor's in Science Degree in Natural
12 Science-Biochemistry from University of Wisconsin-Madison in 2006 and his PhD
13 in Developmental Biology from Stanford University in 2013. Dr. Lim began
14 working for Vickers Venture Partners in Singapore in 2015 as a biotechnical
15 investment analyst and venture principal.

16 25. In an attempt to expand Vickers Venture Partners' investment portfolio in
17 U.S.-based companies, VVP Advisors was incorporated in Delaware in 2016. VVP
18 Advisors opened offices in New York and San Francisco.

19 26. Due to USCIS delays in processing Dr. Lim's H-1B petition, VVP Advisors
20 applied for an H1B1 visa at the Singapore consulate. It was approved in November
21 2018, and Dr. Lim is currently working as an H1B1 biotechnical investment
22 analyst for VVP Advisors. The standard for the H1B1 and the H-1B are identical;
23 however, the H1B1 is less desirable because it can only be granted in one year
24 increments and it does not allow for immigrant intent.

25 ***VVP Advisors' H-1B Petition***

26 27. In April 2018, VVP Advisors properly submitted its H-1B petition for
27 consideration as a "master's exemption" petition. VVP Advisors filed the H-1B
28 petition because it intended to invest tens of millions of dollars in US-based start-

1 up companies focused on life sciences, biotechnical, and pharmaceuticals, and,
 2 with many of those companies based in Northern California, Plaintiff wanted one
 3 of its primary biotechnical investment analysts to be working in the geographical
 4 area where many of their investment targets were located.

5 28. Included with its H-1B petition, VVP Advisors provided an employer letter
 6 detailing the six primary job duties of a biotechnical investment analyst including
 7 percentage of time spent on each duty:

8 1) **Formulation of Investment Strategy**: Dr. Lim will undertake a process
 9 similar to his PhD training by synthesizing strategic, financial and technical
 10 information from a broad variety of sources to propose specific investment
 11 hypotheses. Dr. Lim's deep technical knowledge equips him to navigate
 12 several complex domains. Dr. Lim will work with the Partners to articulate
 13 and refine these hypotheses, then propose investments that test the
 14 hypothesis. *Dr. Lim will spend approximately 5% of the time on this duty.*

15 2) **Identification and detailed evaluation of investment opportunities**: VVP
 16 has decided that a key part of the investment strategy is to invest in United
 17 States Deep Tech companies. In order to source new investment
 18 opportunities that are consistent with the investment strategy, Dr. Lim needs
 19 to be located in a major U.S. Tech hub like Silicon Valley in California.
 20 Since Dr. Lim obtained his PhD at Stanford University, he has relationships
 21 with top innovators and funders in the area. Dr. Lim's extensive networks
 22 with the top United States and Asian academic center developed from his
 23 academic and industry work gives him access to technology at the earliest
 24 stages and helps him identify and recruit the top subject matter experts and
 25 entrepreneurs to help with strategy formulation and technology
 26 commercialization. Dr. Lim will attend Demo Days, company showcases,
 27 and investor conferences.

28 After identifying promising companies to invest in, Dr. Lim will spend time

conducting research and due diligence to validate the investment hypothesis and determine potential financial return. The evaluation of a new investment integrates the assessment of each of the various elements of risk associated with a company's business plan, including a detailed analysis of the tech and science, company's product development and financing plans, commercial opportunity, intellectual property, and competitive landscape. To effectively perform this multi-faceted assessment, Dr. Lim uses all the training obtained from his PhD, drug development and business courses. If Dr. Lim determines that the company presents an attractive investment opportunity, he will prepare a company specific and thematic research report that he will present to the Investment Committee. ***Dr. Lim will spend approximately 30% of the time on this duty.***

- 3) **Negotiation of terms for a new investment and exits:** When the Partners vote to invest in a company, Dr. Lim will work with the Partners and legal Counsel to prepare a term sheet that will specify the terms for investment in the company. Dr. Lim will seek to balance the interests of the investors with the company to find a win-win situation. ***Dr. Lim will spend approximately 15% of the time on this duty.***
 - 4) **Ongoing support of portfolio companies:** Following the completion of the investment, Dr. Lim will support the key Biotech portfolio companies based in the United States, such as Samumed and Sisaf. Samumed is developing drugs that modulate the Wnt signaling pathway for a variety of different diseases, and Dr. Lim's expertise in Wnt signaling gained from his PhD and subsequent research work make him uniquely qualified to understand Samumed's science and support commercialization activities. Sisaf plans to use its propriety drug delivery platform to formulate and develop new products for skin care and disease treatments. Dr. Lim's expertise in skin biology and drug development enable him to authoritatively advise and

1 support Sisaf's commercial efforts. ***Dr. Lim will spend approximately 30%
2 of the time on this duty.***

3) **Raising money for VVP Advisors and portfolio companies:** Dr. Lim will
4 work with the Operating MDs to help raise fund for VVP to invest, as well
5 as raise co-investments for portfolio companies to accelerate their growth.
6 Dr. Lim will leverage his scientific and applied business training to
7 understand the technology/science/product and synthesize it with other
8 criteria to make a compelling pitch to other investors. ***Dr. Lim will spend
9 approximately 10% of the time on this duty.***

10) **Managing projects and teams:** Since this job involves a substantial amount
11 of project and people management, Dr. Lim will utilize the management
12 skills honed during his PhD and subsequent work leading and managing a
13 large lab with international collaborators in academia and industry. ***Dr. Lim
14 will spend approximately 10% of the time on this duty.***

15) **(Exhibit 1 at Pages 19-20)**

16) 29. Pursuant to its lottery, USCIS randomly selected VVP Advisors' petition
17 and, on or about April 20, 2018, accepted VVP Advisors' H-1B petition for filing.

18) ***USCIS Issues Request for Evidence***

19) 30. On July 18, 2018, USCIS issued a Request for Evidence (RFE) stating that
20 VVP Advisors' biotechnical investment analyst position had not been proven to be
21 a specialty occupation. The RFE requested a more detailed statement of Dr. Lim's
22 duties and responsibilities among other things. The RFE also requested examples
23 of Dr. Lim's work product.

24) 31. In response, VVP Advisors provided over 300 pages of evidence including
25 work product created by Dr. Lim that exemplify his job duties. They provided a
26 due diligence report for Sisaf, Ltd. in which Dr. Lim evaluated the current state of
27 one of the organization's portfolio companies. (Job Duty #4.) VVP Advisors also
28 included a thirteen page evaluation of a potential investment target authored by Dr.

1 Lim regarding the company Atomwise, Inc. (Job Duty #2.) Finally, they provided a
2 sample term sheet for a potential investment opportunity. (Job Duty #3)

3 32. VVP Advisors provided an even more in-depth explanation regarding the
4 same six job duties; this time explaining which computer programs, software and
5 applications Dr. Lim uses to perform each job duty and further detailing his
6 process to accomplish each duty. The same exact six job duties were identified
7 here as were identified in the initial employer letter. The only difference was the
8 level of detail provided in response to the RFE. (**Exhibit 2 at Pages 22-25**)

9 ***USCIS' Denial of the H-1B Petition***

10 33. On March 12, 2019, USCIS issued a denial of the H-1B petition that
11 contained numerous errors, misstatements and a fundamental lack of attention to
12 detail. The denial claimed that the position was for a biological scientist and failed
13 to recognize that while the SOC code was for a Biological Scientist, All Other, the
14 job title was Biotechnical Investment Analyst. USCIS's denial disregarded the
15 evidence when it concluded that the job duties identified in the initial H-1B filing
16 differed from the job duties that were stated in the RFE response. In the denial,
17 USCIS completely mischaracterized the evidence when it stated that VVP
18 Advisors identified four job duties in the initial filing:

- 19 1) Negotiate international investments with particular focus on the
20 Biotechnology, Medical, and Educational Technology sectors;
- 21 2) Support key Biotech portfolio companies that develop drugs that modulate
the Wnt signaling pathway for a variety of different diseases;
- 22 3) Use propriety drug delivery platform to formulate and develop new products
for skin care and disease treatments;
- 23 4) Work with Operating MDs to help raise fund for VVP to invest.

24 **(Exhibit 3 at Page 29)**

25 34. The denial failed to acknowledge that VVP Advisors stated the same six job
26 duties in both the initial filing and the RFE response. USCIS cherry-picked from

1 the expanded explanation of the job duties and claimed that the response to the
2 RFE added new job duties that were never mentioned in the initial filing. USCIS
3 concluded that the new job duties described a computer systems analyst or
4 financial analyst by ignoring the substantial explanation of how Dr. Lim's science-
5 based education is specifically required to perform the job of biotechnical
6 investment analyst.

7 35. USCIS created an alternate universe by introducing job requirements that
8 were not part of the record and Dr. Lim could not meet based on his educational
9 background. By mischaracterizing the evidence, USCIS concluded that the
10 biotechnical investment analyst is better classified under the SOC code for a
11 computer systems analyst or financial analyst. Then, USCIS concluded that Dr.
12 Lim was not qualified to perform either as a computer systems analyst or a
13 financial analyst because he does not have the educational background to prepare
14 him for either position.

15 ***Dr. Lim's Biotechnical Investment Analyst position is so complex or unique that
16 it can be performed only by an individual with a degree***

17 36. In order to qualify as a specialty occupation, VVP Advisors must show that
18 the position requires the theoretical and practical application of a body of highly
19 specialized knowledge and that requires the attainment of a bachelor's degree or
20 higher in a specific specialty. 8 U.S.C. §1184(i). As stated earlier in paragraph 21,
21 the federal regulations require that VVP Advisors show that the position meets one
22 of the four prongs in order to prove specialty occupation. 8 C.F.R.
23 §214.2(h)(4)(iii)(A)(1)-(4). Here, the biotechnical investment analyst position
24 meets the second prong because the position is so complex and unique that it can
25 only be performed by an individual with a science degree. The job duties described
26 in both the initial filing and the response to the RFE clearly evince the requirement
27 that a biotechnical investment analyst must have at least a bachelor's degree in
28 science. Plaintiff is deciding whether to invest millions of dollars in life science,

1 biotech and pharmaceutical companies based on the evaluations, reports and advice
2 from Dr. Lim. Once Plaintiff decides to invest in a start-up company, they are
3 entrusting Dr. Lim to help support the portfolio company and make it profitable.
4 Without Dr. Lim's PhD level scientific education, he could not provide accurate
5 assessments of which companies' science and technology are likely to succeed and
6 become profitable. Neither a computer systems analyst nor a financial analyst can
7 perform this type of work. VVP Advisors properly classified the job under the
8 SOC code for Biological Scientist, All Others because the biotechnical investment
9 analyst position is a newer, emerging occupation that has not yet been
10 independently categorized by Bureau of Labor Statistics, and it is primarily a
11 scientist position.

12 37. Dr. Lim obtained a Bachelor's in Science Degree in Natural Science-
13 Biochemistry and a PhD in Developmental Biology. This education has provided
14 Dr. Lim with the highly specialized knowledge required to perform the
15 biotechnical investment analyst position.

16 **COUNT ONE**

17 **Violation of the Administrative Procedure Act, 5 U.S.C. § 701, et seq.,**
18 **the Immigration and Nationality Act and its Implementing Regulations**

19 38. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
20 the allegations in paragraphs 1-37 above.

21 39. Plaintiff is entitled to review by this Court pursuant to 5 U.S.C. §§701-706.

22 40. A reviewing court shall "hold unlawful and set aside agency action . . .
23 found to be – arbitrary , capricious, an abuse of discretion, or otherwise not in
24 accordance with law." 5 U.S.C. §706(2)(A).

25 41. Defendants denied VVP Advisors' H-1B petition through mischaracterizing
26 the evidence presented and concluding that Dr. Lim's biotechnical investment
27 analyst position should have been classified as a computer systems analyst or
28 financial analyst, and that Dr. Lim did not have the proper education to qualify for

1 either of those positions.

2 42. Plaintiff VVP Advisors submitted evidence demonstrating that the position
3 satisfied the statutory definition of a specialty occupation, 8 U.S.C.
4 §1184(i)(1)(A)-(B).

5 43. Plaintiff VVP Advisors submitted over 300 pages of evidence
6 demonstrating that the biotechnical investment analyst position satisfied the second
7 prong of the regulatory criteria of specialty occupation by proving that the
8 biotechnical investment analyst position is so complex or unique that it can be
9 performed only by an individual with a degree. 8 C.F.R. §214.2(h)(4)(iii)(A)(2).

10 44. Defendants failed to properly consider all record evidence; reached factual
11 conclusions as to the biotechnical investment analyst position unsupported by any
12 evidence in the record; mischaracterized the evidence when applying the
13 applicable regulations; impermissibly imposed evidentiary requirements beyond
14 those required by Congress; and, erroneously concluded that the biotechnical
15 investment analyst position for VVP Advisors did not constitute a specialty
16 occupation under the INA and the corresponding regulations.

17 45. Defendants' errors, singly and in combination, were arbitrary, capricious and
18 in violation of the law. Consequently, Defendants acted arbitrarily, capriciously,
19 and contrary to the law in violation of the APA, the INA, and the immigration
20 regulations by denying Plaintiff VVP Advisors' H-1B petition.

21 **REQUEST FOR RELIEF**

22 WHEREFORE, PLAINTIFF prays that the Court grant the following relief:

23 1. Declare that Defendants' determination that evidence submitted by Plaintiff
24 VVP Advisors was insufficient to establish that the Biotechnical Investment
25 Analyst position is a specialty occupation was arbitrary and capricious, and not
26 in accordance with law, in violation of the APA, 5 U.S.C. §706(2)(A), the INA
27 and the regulations;

- 1 2. Vacate the denial of VVP Advisors' H-1B petition and remand this matter to
- 2 Defendants with instructions that, within ten day of the date of the Court's
- 3 Order, it: approve the Form I-129, Petition for Nonimmigrant Worker filed by
- 4 Plaintiff VVP Advisors with validity through September 27, 2021.
- 5 3. Award Plaintiff its costs in this action; and
- 6 4. Grant such other relief as the Court deems just, equitable and proper.
- 7 5. For attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C.
- 8 §2412.

9 DATED: May 15, 2019

NELSON & NUÑEZ, P.C,

11 by: _____

12 JAY I. NUÑEZ, Attorney for PLAINTIFF,
13 VVP Advisors, Inc.

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1 **INDEX OF EXHIBITS**

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4 PAGES 18-20 LETTER SUBMITTED WITH THE H-1B PETITION IN
5 APRIL 2018
- 6 EXHIBIT "2" COPY OF VVP ADVISORS' EMPLOYER LETTER
7 PAGES 21-27 SUBMITTED IN RESPONSE TO THE RFE IN OCTOBER
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- 9 EXHIBIT "3" COPY OF USCIS DENIAL DATED MARCH 12, 2019
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